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**Summary of Commission Decision**

**of 12 February 2024**

**relating to a decision pursuant to Article 17(3) of Regulation (EU) 2022/1925**

**(Cases DMA.100015 – Microsoft – Online Search Engines, DMA.100028 – Microsoft – Web Browsers, DMA.100034 – Microsoft – Online Advertising Services)**

*(notified under document number C(2023) 6078)*

**(Only the English text is authentic)**

(C/2024/2709)

*On 12 February 2024, the Commission adopted a decision pursuant to Article 17(3) of Regulation (EU) 2022/1925 of the European Parliament and of the Council* [1]*. In accordance with the provisions of Article 44 of Regulation (EU) 2022/1925, the Commission publishes the names of the parties and the main content of the decision, having regard to the legitimate interest of undertakings in the protection of their business secrets.*

## 1. INTRODUCTION

(1) The Commission's decision ('the Decision') sets out the reasons based on which the Commission, following its market investigations pursuant to Article 17(3) of Regulation (EU) 2022/1925 (Digital Markets Act, 'DMA'), does not designate Microsoft Corporation (hereinafter referred to as 'Microsoft' or the 'Undertaking') as a gatekeeper pursuant to Article 3 DMA in relation to its three core platform services ('CPSs') online search engine Microsoft Bing, web browser Microsoft Edge and online advertising services Microsoft Advertising, even though they meet the quantitative thresholds set out in Article 3(2) DMA.

## 2. PROCEDURE

(2) Following Microsoft's notification on 3 July 2023, the Commission adopted a decision on 5 September 2023, designating Microsoft as a gatekeeper pursuant to Article 3 DMA in relation to its operating system CPS Windows PC OS and its online social networking CPS LinkedIn [2]. In that decision, the Commission also concluded that Outlook.com constitutes a number-independent interpersonal communications service ('NIICS') for which Microsoft meets the quantitative thresholds set out in Article 3(2) DMA, but that Microsoft clearly and comprehensively demonstrated that the requirement of that CPS constituting an important gateway laid down in Article 3(1), point (b) DMA is not fulfilled. Accordingly, Microsoft was not designated as a gatekeeper in relation to its NIICS CPS Outlook.com. Furthermore, the Commission concluded that Microsoft Bing, Microsoft Edge and Microsoft Advertising constitute respectively an online search engine, a web browser, and online advertising services, all CPSs pursuant to Article 2(2) DMA, for which Microsoft meets the quantitative thresholds set out in Article 3(2) DMA, but that Microsoft presented sufficiently substantiated arguments manifestly calling into question the presumptions laid down in Article 3(2) DMA in relation to each of those three CPSs.

(3) As a consequence, the Commission adopted a decision on 5 September 2023, opening three market investigations pursuant to Articles 16(1) and 17(3) DMA to assess whether, following the arguments presented by Microsoft pursuant to Article 3(5) DMA, Microsoft's online search engine Bing, its web browser Edge, and its online advertising services Microsoft Advertising should be listed as important gateways for business users to reach end users in the decision designating Microsoft as a gatekeeper [3].

[1] Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) (OJ L 265, 12.10.2022, p. 1).
[2] Decision C(2023) 6106 final of 5 September 2023.
[3] Decision C(2023) 6078 final of 5 September 2023.

(4) On 29 November 2023, the Commission communicated its preliminary findings to Microsoft according to Article 17(3) DMA. Microsoft replied on 5 December 2023.

(5) In accordance with Articles 17 and 50(2) DMA, the Digital Markets Advisory Committee was consulted and issued a positive opinion on 1 February 2024.

## 3. LEGAL FRAMEWORK

(6) The DMA establishes a set of narrowly defined objective criteria for designating an undertaking as a gatekeeper. Designation is to be made in relation to one or more CPSs provided by the undertaking that are an important gateway for business users to reach end users within the meaning of Article 3(1), point (b) DMA. In order to determine whether a service provided by an undertaking is a CPS that meets the requirement set out in Article 3(1), point (b) DMA, it is necessary, as a preliminary step, to qualify and delineate the respective service. A relevant criterion for qualifying and delineating CPSs is the purpose for which the service is used by either end users or business users or both.

(7) According to Article 3(1) DMA, the Commission is to designate an undertaking as a gatekeeper if it fulfils three cumulative requirements, namely: (a) it has a significant impact on the internal market; (b) it provides a CPS which is an important gateway for business users to reach end users; and (c) it enjoys an entrenched and durable position, in its operations, or it is foreseeable that it will enjoy such a position in the near future. Article 3(2) DMA lays down a presumption that those requirements are satisfied where certain quantitative thresholds are met, in particular regarding the company's turnover or market capitalisation as well as the numbers of end users and business users of a particular CPS in each of the last three financial years.

(8) Pursuant to Articles 3(5) and 17(3) DMA, the Commission may conduct a market investigation for the purpose of examining whether an undertaking providing CPSs which satisfies the thresholds set out in Article 3(2) DMA and which has presented sufficiently substantiated arguments in accordance with Article 3(5) DMA manifestly calling into question the presumptions set out in Article 3(2) DMA nevertheless fulfils the criteria in Article 3(1) DMA or not. In accordance with the results of the market investigation, the Commission accepts or rejects an undertaking's rebuttal and consequently designates or does not designate the undertaking as a gatekeeper within the meaning of the DMA.

## 4. THE COMMISSION'S ASSESSMENT

(9) Following the notification by Microsoft and the market investigations conducted by the Commission pursuant to Articles 17(3) and 3(5) DMA, the Commission does not designate Microsoft as a gatekeeper with regard to (i) its online search engine Bing, (ii) its web browser Edge, and (iii) its online advertising services Microsoft Advertising, as these services are not important gateways for business users to reach end users within the meaning of Article 3(1), point (b) DMA.

(10) With respect to Microsoft's online search engine Bing, the Commission bases its conclusion on the following reasons.

(11) First, the Commission considers that Bing's scale of usage by end users is low, in comparison to the overall scale of the online search engine CPS category as well as in comparison to the largest online search engine Google Search. Bing's limited scale of usage by end users indicates not only that Bing is not an important gateway for end users to find business users, but also that it is not an important gateway for business users to reach end users.

(12) Second, the Commission considers that Microsoft's platform ecosystem does not currently sufficiently contribute to Bing being an important gateway for business users to reach end users. Furthermore, the market investigation confirmed that the launch of Bing Chat, enabled by ChatGPT 4, in February 2023 has not led to a stable and significant increase in the usage of the online search engine Bing, over the period considered in the market investigation.

(13) With respect to Microsoft's web browser Edge, the Commission bases its conclusion on the following reasons.

(14) First, Edge's scale of usage in the web browser CPS category is low. Furthermore, evidence shows that the integration of Bing Chat, Windows PC OS and Microsoft applications (M365) has, at this point in time, not translated into a significant and sustained increase of Edge's overall scale as a web browser.

(15) Second, Microsoft does not control the relevant web browser architecture. Consequently, the way in which content is rendered on Edge by business users to end users is predicated on conforming with Alphabet's browser rendering engine 'Blink', rather than an autonomous choice by Microsoft.

(16) Third, Microsoft's platform ecosystem does not currently sufficiently contribute to Edge being an important gateway for business users to reach end users. Similarly, Microsoft's ability to use Edge as a lever to drive usage of other Microsoft services is at present limited. Lastly, following the designation of Microsoft as gatekeeper for its Windows PC OS, Article 6(3) DMA obliges Microsoft to enable end users to easily un-install any software application and to easily change defaults settings on the OS, which reduces further any advantage that it may derive from the pre-installation of Edge on Windows devices.

(17) With respect to the online advertising services Microsoft Advertising, the Commission bases its conclusion on the following reasons.

(18) First, Microsoft Advertising has a relatively small scale compared to the overall scale of activities within the online advertising CPS category in the Union, as well as compared to the main providers of online advertising services in the Union.

(19) Second, as of today, the data-driven advantages and network effects of Microsoft's platform ecosystem of services (especially the online search engine Bing) have not resulted in sufficient scale effects benefitting Microsoft Advertising. Therefore, Microsoft Advertising does not constitute an important gateway for business users to reach end users.

(20) Third, the usage of Microsoft Advertising by business users is low which further confirmed that it cannot be considered an important gateway for business users to reach end users.

## 5. **CONCLUSION**

(21) For the reasons set out above, the Decision closes the market investigations opened by decision C(2023) 6078 of 5 September 2023 into Microsoft's (i) online search engine Bing, (ii) web browser Edge, and (iii) online advertising services Microsoft Advertising, by concluding that those CPSs should not be listed as important gateways for business users to reach end users in the decision designating Microsoft as a gatekeeper pursuant to Article 3 DMA.

(22) That conclusion is without prejudice to the possibility that the Commission may reconsider or amend this Decision, pursuant to Article 4(1) DMA, should there be any substantial change in any of the facts on which it is based, or if this Decision was based on incomplete, incorrect or misleading information.